

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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OCT 13 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Amendment of the Commission's Rules
to Permit FM Channel and Class
Modifications by Application

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MM Docket No. 92-159

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FILE

REPLY COMMENTS OF NORTH JEFFERSON BROADCASTING COMPANY, INC.

Comes now, North Jefferson Broadcasting Company, Inc., through counsel, with its "Reply Comments" in the above-captioned proceeding. North Jefferson Broadcasting Company, Inc. is the licensee of WLBI(FM), Warrior, Alabama.

On October 5, 1992, the National Association of Broadcasters ("NAB") filed "Comments" in MM Docket No. 92-159. On Page 7, of its "Comments," the NAB stated the following:

"Yet another demonstration of the urgent need for Commission reform of its allocation policies is found in the Commission's Report and Order MM Docket No. 90-476. In its Petition for Reconsideration, filed September 25, 1992, Radio South, Inc. details how a simple upgrade request for a presently licensed facility (Station WFFN, Cordova, Alabama) resulted in a Commission action that not only denied the upgrade but forced WFFN to change channels and, ironically, relocate its transmitter site farther from its community of license.

This patently unfair Commission action resulted when another petitioner requested a channel for a 'community' with a population of 400 people, effectively blocking the Station WFFN upgrade and the resulting improved service to the Cordova station's city and county of license, of which WFFN is the sole 'local' voice."

(Enclosed in the original)

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The NAB's, discussion of the changes and effects caused by MM Docket No. 90-476 are without basis in either fact or law. The NAB has erroneously represented the situation in that Rule Making Proceeding.

First, Radio Station WFFN, Cordova, Alabama was denied the upgrade because the Commission's rules favor first, local FM service to new communities as opposed to upgrades to existing services. This rule has been Commission law for many years and it furthers the stated objectives of the Communications Act of 1934, as amended.

Second, WFFN, Cordova, Alabama, is not being forced to change channels or to relocate its transmitter site. WFFN, throughout the rule making proceeding, requested an upgrade in order to improve its service to its community of license. It had indicated, in a number of pleadings filed in the rule making proceeding, that it would be satisfied with an upgrade to 6,000 watts, should an upgrade to 25,000 watts not be possible. The Commission, on its own motion, and as a favor to the licensee, conducted a channel study at taxpayers' expense in order to accommodate WFFN's express desire to improve its facility at Cordova, Alabama when it became clear that neither the Class C3 channel nor the 6 kw Class A channel, suggested by WFFN, would not satisfy the FCC's minimum distance separation and city grade requirements. It should be noted that WFFN is under no obligation to relocate to any new channel. WFFN is under no obligation to relocate its transmitter site. As a matter of act, in its "Petition for Reconsideration," WFFN refused the Commission's gift of an upgrade from 3,000 to 6,000 watts. It is WFFN's right to refuse the Commission-offered upgrade. Therefore, WFFN will neither change channels nor relocate its transmitter site.

It is incomprehensible that the NAB could take the Report and Order in the Cordova, Alabama proceeding and twist its clear meaning and intent and arrive at a completely incongruous result from that contained in the document. The NAB's interpretation of the Report and Order is so completely "off-the-wall" that it strains credulity. One must wonder whether the NAB has, in other areas of its "Comments" in this proceeding, twisted other facts to suit its own objectives. Certainly, it cannot be said that the NAB has presented the Report and Order in MM Docket No. 90-476 in an objective manner.

To further add insult to injury, the NAB claims that the Commission's action in MM Docket No. 90-476 was "patently unfair" because it resulted in new, local, FM service to the community of Eva, Alabama, instead of upgrading WFFN at Cordova, Alabama. If the argument of the NAB is to be fully appreciated, one must understand that a small, yet legitimate community, should be denied a first, local, FM radio service simply because of its size. The NAB fails to point out, however, that a new, first, local FM service at Eva, Alabama would serve a population in excess of 100,000 with its proposed facility.

In conclusion, the NAB's demonstration of the urgent need for Commission reform of its Allocations Policies is not exemplified by the Commission's action taken in the Report and Order in MM Docket No. 90-476. If anything, the result in that rule making proceeding highlights the fact that the Commission's existing policy better serves the public interest. Without the Commission's existing policy, Eva, Alabama would have been

denied a first, local, FM facility in favor of an upgrade to an existing facility at Cordova, Alabama. Over 100,000 people in the vicinity of Eva, Alabama would have been denied an additional FM outlet of expression. Cordova, Alabama is located in Walker County. Contrary to WFFN's assertions and, furthermore, contrary to the assertion made by the NAB in its "Comments," Walker County is very adequately served by four (4) radio stations. WARF-AM operates with 1kw, full-time, on 1240 kHz. WARF-AM is licensed to Jasper, Alabama. WZPQ-AM is a daytime only facility operating at 1300 kHz with 1,000 watts. And, finally, WZPQ(FM) operates with 100,000 watts on 102.5 mHz. These stations, together with WFFN, adequately serve Walker County, Alabama. To state that WFFN is the sole "local" voice in Walker County is totally erroneous. Certainly, the Commission's staff in the rule making branch considered all of these factors before awarding a new, first, local, FM radio service to Eva, Alabama. The NAB, however, did not.

Respectfully submitted,

NORTH JEFFERSON BROADCASTING COMPANY, INC.

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Dated: October 13, 1992

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CERTIFICATE OF SERVICE

I, Richard J. Hayes, Jr., hereby certify that copies of the foregoing were sent via first class mail, postage prepaid, or as otherwise indicated, to each of the following, on this 13th day of October, 1992.

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